



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Board of Dentistry, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 60-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Dentistry and Dental Hygiene
<b>Action Title:</b>	Fee increase
<b>Date:</b>	12/5/02

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board, including dentists and dental hygienists, as necessary to provide sufficient funding for the licensing and disciplinary functions of the Board. An annual renewal fee for a dentist would be increased from \$100 to \$150 and for a dental hygienist from \$40 to \$50. Other fees would be increased correspondingly. Some fees would be reduced, such as the application fee for dental hygienists and the reinstatement fees for both professions.

### Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

There was an editorial change to clarify in 18 VAC 60-20-20 C that a licensee who has allowed his license to expire for more than one year shall apply for reinstatement. Subsection B provides that a license may be renewed by payment of the renewal fee and late fee for up to one year; after that, it is necessary to reinstate the license. Also, the term “penalty” fee has been replaced with the term “late” fee, which is more accurate of the nature of the fee.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On December 4, 2002 , the Board of Dentistry adopted final amendments to 18 VAC 60-20-10 et seq., Regulations Governing the Practice of Dentistry and Dental Hygiene, in order to implement a fee increase as required by law as necessary to have sufficient funds to meet expenditures.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law*

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific statutory mandate for an increase in fees is found in § 54.1 113:

**§ 54.1-113. Regulatory Boards to adjust fees.**

*Following the close of any biennium, when the account for any regulatory Board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the amended regulation and that it comports with applicable state and/or federal law.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory Board shall be performed to ensure that each Board has sufficient revenue to cover its expenditures.

When the fee increase was proposed by the Board in February, the projected revenue for FY 02 was \$765,795 and budgeted expenditures were \$906,899. Actual revenue slightly exceeded projections at \$798,347, but the direct and allocated costs were \$998,003. Therefore, the Board had projected a deficit of (\$268,947), but actually ended the fiscal year with a deficit of (\$327,499). Significant increases have been seen in investigations, enforcement, administrative proceedings and all items related to the disciplinary process. Since the Board has been engaged in handling a backlog of disciplinary cases, the projected costs for those areas for FY03 and FY04 have also significantly increased.

At the time the amendments were proposed in February, the projection was for a deficit at the end of FY03 of (\$139,334) and a small surplus by the end of FY04 of \$37,570. With an increased deficit at the end of FY02 and with increases in the budgets for the next two fiscal years, the projected deficit for FY03 is (\$320,008) and for FY04, the projected deficit is (\$292,416). The Board considered an additional increase at the time final regulations were adopted, but to do so would necessitate additional opportunity for public comment. That would delay the adoption of final rules and result in an inability to have the increased fees in effect for March 2003 renewal. Without the

fee increase in 2003, the deficit would be even more significant. In adopting the proposed fee increase as final, the Board recognized that an additional fee increase is likely necessary in the near future.

The purpose of the amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Dentistry. Without adequate funding, the licensing of practitioners could be delayed, and dental care in the Commonwealth would be less accessible. In addition, sufficient funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

Section 20 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to licensing, investigations and disciplinary proceedings. Renewal fees for dentists will increase from \$100 to \$150 per year; renewal fees for dental hygienists will increase from \$40 to \$50 per year. While most of the fees are being increased correspondingly, the dental hygienist application fees for licensure by examination or by endorsement are being decreased. Miscellaneous fees for a returned check and for an inspection are added consistent with other boards within the Department.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

### **1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:**

Fee increases proposed by the Board of Dentistry should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide dental services to the public. For example, an increase in the renewal fee will result in an additional \$50 per year for a dental license and \$10 per year for a dental hygienist. It is not anticipated that the proposed fee increases will have any effect on prices for consumers.

There would be considerable disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in

licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of investigation of complaints against dentists and dental hygienists. There may be delays in adjudicating cases of substandard practice, resulting in potential danger to the patients in the Commonwealth.

Practitioners licensed by the Board of Dentistry will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include inspections, investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

## **2) The primary advantages and disadvantages to the agency or the Commonwealth:**

As is stated above, the consequence of not increasing fees of the Board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the Board. The Board and the Department of Health Professions are solely funded by the fees charged to applicants and licensees. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Dentistry and within other divisions of the Department of Health Professions since the agency is dependent on revenues from the Board for approximately 5.19 % of its costs.

## **3) Other pertinent matters of interest to the regulated community, government officials, and the public:**

During the development of the proposed regulations, representatives of Virginia Dental Association and the Virginia Dental Hygienist Association have been present. There was no comment from dentists or from the VDA but there were seven comments from dental hygienists during the 30-day comment period on the NOIRA.

### **Public Comment**

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

Proposed regulations were published in the Virginia Register of Regulations on July 15, 2002. Public comment was requested for a 60-day period ending September 13, 2002. A Public Hearing before the Board was held on August 2, 2002, at which time there was no comment from the public.

There were two written comments received.

1) A dental hygienist wrote to oppose an increase in the renewal fee from \$40 to \$50 as not justifiable.

2) A dental hygienist wrote to oppose an increase in the renewal fee and to object to having to pay a fee to other states in order to obtain verification of licensure in each jurisdiction when applying for licensure by endorsement in Virginia.

*Board response: The Board regrets the necessity for increasing fees but does not believe that an additional \$10 will create a hardship on dental hygienists. The Board has no control over the fee charged by other states for licensure verification; it does believe such verification is an essential aspect of licensure by endorsement.*

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

### **18 VAC 60-20-20. License renewal and reinstatement.**

- The fee for renewal of an active license or permit to practice or teach dentistry will be increased from \$100 to \$150, and the fee for renewal of an active license or permit to practice or teach dental hygiene will be increased from \$40 to 50.
- The fee for renewal of an inactive license will be increased from \$65 to \$75 for dentists. There is no change in the fee for dental hygienists.
- The late fee for a licensee who does not return the renewal form and fee by the deadline will continue to be \$50 for dentists and decrease from \$35 to \$20 for dental hygienists.
- The requirement for late renewal of a license will be amended to permit such renewal for one year of the expiration date; current regulations require reinstatement after 30 days.
- An amendment will make it clear that a license of any person who does not return the completed renewal form and fees by the deadline will automatically expire and become invalid and his practice of dentistry/dental hygiene is illegal.
- A proposed amendment deletes the requirement on the board to notify the affected licensee of the expiration and the reinstatement procedures after the deadline has passed. Discontinuation of the requirement for an expiration notice will save staff time and mailing expenses.
- Rather than paying accumulated penalty fees which could total \$600 for dentists and \$420 for dental hygienists, any person whose license has expired who wishes to reinstate would be able to do so by paying the renewal fee and the reinstatement fee of \$225 for dentists and \$135 for dental hygienists.

**18VAC60-20-30. Other fees.**

- The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist is reduced from \$160 to \$135.
- A fee for a duplicate wall certificate would be increased from \$15 to \$25.
- A restricted license issued in accordance with §54.1-2714 of the Code of Virginia has had the same renewal fee (\$100) as a dentist, so the proposed renewal fee would be \$150.
- License by endorsement for dental hygienists would be reduced from \$225 to \$135.
- A fee that are currently collected by the Department but not set in regulations would be added; it is \$25 for a returned check.

**Family Impact Statement**

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

In its analysis of the final regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be a modest impact on disposable family income, as dentists and dental hygienists will experience an increase in the cost of maintaining a license. Compared to other costs of doing business, such as finding and hiring qualified personnel and third party billing, licensure fees are relatively insignificant.